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26
27 **UNITED STATES DISTRICT COURT**
28 **NORTHERN DISTRICT OF CALIFORNIA**

Laszlo PUSZTAI, an individual, and DIRE
STUDIO SZOLGÁLTATÓ KORLÁTOLT
FELEL SSÉG TÁRSASÁG, a Hungarian
limited liability company (d/b/a “DIRE Studio
Kft.”),

Plaintiff,

v.

APPLE, INC., a California corporation,
Defendant.

Case No. 3:21-cv-7995-JD

**JOINT CASE MANAGEMENT
STATEMENT & [PROPOSED] ORDER**

Date: January 20, 2022
Time: 10:00 a.m.
Courtroom: 11, 19th Floor

Complaint Filed: May 29, 2021
FAC Filed: August 2, 2021
SAC Filed: December 3, 2021
Trial Date: Not Set

Pursuant to the Standing Order for All Judges of the Northern District of California dated November 1, 2018, Civil Local Rule 16-19, plaintiffs Laszlo Pusztai (“Pusztai”) and DIRE Studio Szolgáltató Korlátolt Felelősség Társaság (“DIRE Studio”) (together, “Plaintiffs”) and defendant Apple Inc. (“Apple”) (collectively, the “Parties”), by and through their undersigned counsel, hereby submit this Joint Case Management Statement in advance of the Case Management Conference on January 20, 2022.

1. Jurisdiction and Service

This is an action arising under the Copyright Act, 17 U.S.C. §§ 101, *et seq.* This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338. No issues exist regarding personal jurisdiction or venue. No party remains to be served.

2. Alleged Facts

Factual Background

Plaintiffs allege that Pusztai is a photographer and programmer in Hungary. SAC ¶ 1. They allege that Pusztai created an application (an “app”) called ShutterCount. Plaintiffs allege that DIRE Studio, the exclusive licensee of ShutterCount, authorized Apple to sell copies of ShutterCount through the App Store. SAC ¶¶ 2, 8. Plaintiffs allege that a Russian citizen, Konstantin Pavlikhin, developed an app called EOS Inspector, which Plaintiffs contend copies ShutterCount’s code. SAC ¶¶ 24-25. Plaintiffs allege that Apple distributed EOS Inspector to the public in the United States, exported copies from the United States to foreign jurisdictions, and certified EOS Inspector for use with Apple’s MacOS operating system from approximately June 2018. SAC ¶ 36. Plaintiffs assert claims against Apple for direct copyright infringement and vicarious and/or contributory copyright infringement. SAC ¶¶ 32-49.

Apple contends that Plaintiffs have not sufficiently pleaded—and will be unable to establish—that EOS Inspector infringes ShutterCount. Even if Plaintiffs demonstrate that EOS Inspector infringes ShutterCount, Apple contends that it had no knowledge regarding any such infringement, nor did Apple supervise or contribute to any such infringement. Moreover, Apple contends that EOS Inspector was not distributed in other countries by Apple, but instead by other Apple-affiliated entities that were dismissed as defendants. Apple contends that Plaintiffs are

attempting to hold Apple responsible for a dispute between them and Pavlikhin for conduct by Pavlikhin, not Apple.

Procedural Background

On May 29, 2021, Plaintiffs filed this action against Apple in the Southern District of New York. *Pusztai v. Apple, Inc.*, Case No. 1:21-cv-4813-PAE (S.D.N.Y. 2021), Dkt. 1. On August 2, 2021, Plaintiffs filed the First Amended Complaint (“FAC”), which added two more defendants: Apple Canada, Inc. and Apple Distribution International Ltd. Dkt. 8. In the FAC, Plaintiffs asserted seven causes of action: (1) copyright infringement, (2) vicarious and contributory copyright infringement, (3) copyright infringement under German law, (4) copyright infringement under UK law, (5) copyright infringement under Australian law, (6) copyright infringement under Canadian law, and (7) permanent injunction. FAC ¶¶ 24-64.

On October 1, 2021, Plaintiffs voluntarily dismissed Apple Canada, Inc. and Apple Distribution International Ltd. Dkt. 17. Later that day, the court transferred this action to this district pursuant to the parties’ joint application to transfer the case. Dkt. 21. On November 19, 2021, Apple filed a motion to dismiss the FAC. Dkt. 27.

On December 3, 2021, Plaintiffs filed the Second Amended Complaint (“SAC”). Dkt. 34. The SAC asserts two causes of action: (1) direct copyright infringement and (2) vicarious and contributory copyright infringement. SAC ¶¶ 32-49. On December 17, 2021, Apple filed a motion to dismiss the SAC. Dkt. 35.

3. Legal Issues

Plaintiffs

Whether Apple, despite Plaintiffs’ notice to it of the infringing nature of EOS Inspector from June 2018, directly infringed Plaintiffs’ copyright by (i) distributing EOS Inspector in the United States and/or (ii) exporting EOS Inspector to foreign jurisdictions for distribution there; whether Apple, despite Plaintiffs’ notice to it of the infringing nature of EOS Inspector from June 2018, vicariously and/or contributorily infringed Plaintiffs’ copyright by (i) permitting distribution of EOS Inspector on Apple’s App Store and/or (ii) certifying EOS Inspector as free

1 from malware and issuing a code-signing certificate permitting EOS Inspector to run on Apple's
2 MacOS operating system.

3 Defendant

4 Whether Plaintiffs own a properly registered copyright to ShutterCount; whether
5 Plaintiffs have standing to assert the claims in the SAC; whether the relevant works are
6 substantially similar; assuming Plaintiffs establish standing, ownership, and infringement,
7 whether Apple committed copyright infringement simply by virtue of the fact that EOS Inspector
8 was available on the App Store in the United States; whether Plaintiffs' purported notice of
9 alleged infringement is sufficient to put Apple "on notice" of infringement; whether Apple is
10 vicariously liable for alleged infringement by a third-party developer.

11 **4. Motions**

12 Apple has a pending motion to dismiss the SAC. Depending on the outcome of the
13 motion and facts obtained during discovery, Plaintiffs and/or Apple may file a motion for
14 summary judgment.

15 **5. Amendment of Pleadings**

16 In the event Apple's motion to dismiss is granted with leave to amend, Plaintiffs
17 anticipate filing a further amended complaint.

18 **6. Evidence Preservation**

19 The Parties confirm they have reviewed the Guidelines Relating to the Discovery of
20 Electronically Stored Information and that they have met and conferred pursuant to Fed. R. Civ.
21 P. 26(f) regarding reasonable and proportionate steps taken to preserve evidence relevant to the
22 issues in this action.

23 **7. Disclosures**

24 The Parties will serve their initial disclosures on or before February 24, 2022.

25 **8. Discovery**

26 **a. Discovery to Date and Coordination**

27 The Parties have not conducted any discovery to date.

28 **b. Scope of Anticipated Discovery**

Plaintiffs

Plaintiffs anticipate seeking written and/or oral discovery from Apple regarding, among other things, (1) Apple's import and/or export of EOS Inspector; (2) Apple's certification of EOS Inspector for use with Apple's MacOS operating system; (3) distribution by Apple and/or its affiliates of updated versions of EOS Inspector to purchasers of prior versions; and (4) financial information regarding revenues, costs and profits connected with the distribution and sale of EOS Inspector.

Defendant

Apple anticipates seeking written discovery from Plaintiffs regarding, among other things: (1) the creation and development of ShutterCount; (2) Plaintiffs' alleged ownership of ShutterCount, including registrations of and applications to register ShutterCount; (3) ShutterCount's source code and/or other relevant code, including its non-functional code; (4) Pusztai's agreement and relationship with DIRE Studios; (5) any licensing agreements between Plaintiffs and third parties relating to ShutterCount; (6) internal communications regarding ShutterCount or EOS Inspector; (7) communications between Pusztai and Pavlikhin regarding ShutterCount or EOS Inspector; (8) communications with Apple and others regarding ShutterCount or EOS Inspector; (9) information regarding ShutterCount, including reviews and sales figures; and (10) financial information relating to ShutterCount, including revenues, costs, and profits.

c. Proposed Limitations or Modifications to the Discovery Rules

The Parties do not propose any limitations or modifications to the discovery rules. The Parties expect that they will stipulate to a protective order based on the Northern District of California's model order.

d. Report of Planned Stipulated e-Discovery Order

The Parties have met and conferred regarding the Stipulated Electronically Stored Information (ESI) protocol.

9. Class Actions

Not applicable.

10. Related Cases

Not applicable.

11. ReliefPlaintiffs

Plaintiffs seek:

- J A preliminary and permanent injunction precluding Apple and any parties with which it may be in concert from continued certification and distribution of EOS Inspector;
- J With respect to infringing acts occurring before Plaintiff's registration of ShutterCheck, Plaintiffs' actual damages and Apple's and Pavlikhin's profits attributable to the infringement(s) of Plaintiffs' copyright, pursuant to 17 U.S.C. § 504, including pre-and post-judgment interest;
- J With respect to infringing acts occurring after registration of ShutterCheck, either (at Plaintiffs' option) (i) Plaintiff's actual damages and Apple's and Pavlikhin's profits attributable to the infringement(s) or (ii) statutory damages pursuant to 17 U.S.C. § 504, including pre-and post-judgment interest; and
- J Plaintiffs' attorneys' fees and costs, pursuant to 17 U.S.C. § 505.

Defendant

Apple does not believe that Plaintiffs are entitled to any relief whatsoever.

12. Settlement and ADR

On December 31, 2021, Plaintiffs and Apple filed their respective Alternative Dispute Resolution Certifications ("ADR") pursuant to Local Civil Local Rule 16-8(b) and ADR Local Rule 3-5(b). Dkt. Nos. 36, 37. The Parties are amenable to mediation and/or a settlement conference before a magistrate judge.

13. Consent to Magistrate Judge for All Purposes

The Parties do not consent to a magistrate judge.

14. Other References

The Parties do not believe the case is suitable for reference to binding arbitration, a

Special Master, or the Judicial Panel on Multidistrict Litigation.

15. Narrowing of Issues

Other than the pending motion to dismiss, none.

16. Expedited Trial Schedule

The Parties agree that this case is not suitable for handling under Expedited Trial Procedure.

17. Scheduling

October 25, 2022	Close of Fact Discovery
December 13, 2022	Disclosure of Experts and Expert Reports for any Party Seeking Affirmative Relief
January 24, 2023	Disclosure of Responsive Experts and Expert Reports
February 23, 2023	Close of Expert Discovery
March 23, 2023	Deadline to File Dispositive and <i>Daubert</i> Motions
April 20, 2023	Oppositions to Dispositive and <i>Daubert</i> Motions
May 11, 2023	Replies in Support of Dispositive and <i>Daubert</i> Motions
June 1, 2023	Hearing on Dispositive and <i>Daubert</i> Motions
June 29, 2023	Pre-Trial Conference
July 20, 2023	Trial

18. Trial

The Parties estimate a 5-day trial.

19. Disclosure of Non-Party Interested Entities or Persons

On November 19, 2021, Apple filed its Disclosure Statement and Certification of Interested Entities or Persons. Dkt. 25. Plaintiff DIRE Studio filed its Fed. R. Civ. P. 7.1 corporate disclosure statement (Dkt. 4) when this action was pending in the Southern District of New York. Plaintiffs have submitted a supplementary Certification of Interested Entities or Persons (Dkt. 45) concurrently herewith.

20. Professional Conduct

The Parties confirm that all attorneys of record have reviewed the Guidelines for Professional Conduct for the Northern District of California.

21. Other Matters

The Parties have no additional matters at this time.

DATED: January 13, 2022

Respectfully submitted,

LAW OFFICES OF JOSHUA GRAUBART,
P.C.

By: /s/ Joshua Graubart
JOSHUA GRAUBART

Attorneys for Plaintiffs
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SZOLGÁLTATÓ KORLÁTOLT
FELEL SSÉG TÁRSASÁG

DATED: January 13, 2022

Respectfully submitted,

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APPLE INC.

[PROPOSED] CASE MANAGEMENT ORDER

The above JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER is approved as the Case Management Order for this case and all parties shall comply with its provisions.

IT IS SO ORDERED.

Dated: _____

HON. JAMES DONATO
UNITED STATES DISTRICT JUDGE